THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 22319 OF 2007

Date: 29.10.2007

Between:

M/s. Premier Electrical & Constructions (P) Limited, D-54, Phase –I, IDA, Jeedimetla, Hyderabad.

… Petitioner

and

The Commercial Tax Officer, Jeedimetla Circle, Hyderabad.

…
Respondent.

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 22319 OF 2007

ORDER: (per THE HON'BLE SRI JUSTICE BILAL NAZKI)

Heard the learned Counsel for the parties. The Commercial Tax Officer on 06.12.2005 passed an order, which was received by the petitioner on 16.03.2006 and which has been challenged by way of this writ petition. He submits that the order impugned is neither a show cause notice nor an assessment order. Therefore he cannot challenge it by way of an appeal. He submits in penultimate para of the order, the Commercial Tax Officer wrote:

> "The objections raised by the dealer on proposed levy of tax on over Rs.63,16,915.00 pertains to Branch transfer, the dealer did not file any documentary evidence in support of their claim or exemption. Hence the objection raised by the dealer is not considered for want of documentary evidence. However an opportunity has provided to the dealer to file documentary evidence within (15) days to prove their claim of exemption and modification orders."

He submits that earlier a show cause notice was given to him and he had stated that the proposed levy of tax was being levied on transaction which was in the nature of branch transfer, but the assessing officer gave him fifteen days time to produce the documentary evidence but in the same order and in the same para he passed the final assessment order which reads as under:

> "Thus the final assessment of the dealer for the year 2002-2003 U/CST Act 1956 is completed on the following turnovers.
>
> G.T.O. : Rs. 65,19,315.00
>
> G.T.O. : Rs. 24,400.00

G.T.O. : Rs. 64,94,915.00

N.T.O. @ Rs. 62.000.00	Tax	Rs.	2,400.00
N.T.O. @ Rs.1,16,000.00	Tax	Rs.	13,920.00
N.T.O. @ Rs.63,16,915.00	Tax	Rs.	7,50,030.00
	Total Tax Due	Rs.	7,74,430.00
	Tax paid	Rs.	16,400.00
	Balance	Rs.	7,58,030.00

A demand notice in form CST VIII is issued accordingly."

Learned Government Pleader has not been able to give any satisfactory explanation about the contradiction in the order impugned. Therefore we set aside the order and set aside the last paragraph of the order and direct the petitioner to treat the impugned order as a notice to produce the documentary evidence. The petitioner may do so within two weeks from today and the respondent Commercial Tax Officer may pass order of assessment thereafter.

The writ petition is, accordingly, disposed of

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BILAL NAZKI,J

Date: 29.10.2007

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RAMESH RANGANATHAN,J

MRKR